Supreme Court, U.S.
FILED
No. _____
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In The

Supreme Court of the United States

AUDREY WEINSTOCK,

Petitioner,

v.

JACK WALKER,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT S. CATZ
Counsel of Record
1600-28th Street, N.W.
Washington, D.C. 20007
(202) 277-6585

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

I. QUESTION PRESENTED FOR REVIEW

Does the *Rooker-Feldman* exception doctrine deprive the United States courts from exercising jurisdiction under U.S. Const. Article III, Section 2 to entertain an original, separate and independent action tantamount to a bill in equity arising under federal common law collaterally attacking a final state court judgment as void under the Due Process Clause of the Fourteenth Amendment of the United States Constitution as well as for extrinsic fraud upon the rendering state court?

II. THE PARTIES

Petitioner Audrey Weinstock is an adult citizen and resident of Queens, New York.

Respondent Jack Walker is an adult citizen and resident of Brooklyn, New York.

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III. OPINIONS BELOW

The summary order of the United States Court of Appeals for the Second Circuit entered on August 27, 2009 is unreported. (App. 1-4)

The memorandum and order of the United States District Court for the Eastern District of New York entered on May 31, 2006 is unreported. (App. 5-14)

The decision on reconsideration of the United States Bankruptcy Court for the Eastern District of New York entered on May 17, 2005 is reported. *Weinstock v. Handler*, 324 B.R. 184 (Bankr. E.D.N.Y. 2005). (App. 15-25)

IV. JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

This timely petition was filed within 90 days of the Second Circuit's order entered in this case on August 27, 2009.

V. CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Article III, Section 2:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public ministers

and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. Amendment XIV, Section 1:

All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VI. STATEMENT OF THE CASE

During the 1970's, Respondent Jack Walker ("Walker") was a part of an ownership investment group that purchased two buildings located at 4200 and 4211 Avenue K, Brooklyn, New York. *Walker v. Weinstock*, 658 N.Y.S.2d 167 (Sup. Ct. King Cty. 1997). The investment group took title to the buildings in the name of 4200 Avenue K Realty Corporation ("4200 Corp."), a closely held corporation. Walker

was one of several investors in 4200 Corp. By two separate written transactions, Walker assigned all of his stock in 4200 Corp. to Israel Weinstock[1] for valuable consideration.

In September 1986, Walker and other partners, including Emmerich Handler ("Handler") commenced an action against Weinstock to set aside the stock transfers that Walker had assigned to him, alleging that Walker had been threatened and coerced by Weinstock and that Walker had conveyed stock to Weinstock that actually belonged to Handler and other partners. In *Walker v. Weinstock*, the New York Supreme Court declared both transfers by Walker to Weinstock void. *Walker. Id.* at 169. The trial court held that Handler was the true owner of 4200 Corp. and that Weinstock had no claim to the buildings.

Weinstock then appealed to the New York Supreme Court, Appellate Division, 680 N.Y.S.2d 177 (2nd Dept. 1998), which affirmed the decision of the trial court. The New York Court of Appeals then denied review. 717 N.E.2d 700 (N.Y. 1999).

Soon after the 1997 final judgment was entered in *Walker v. Weinstock*, Handler then commenced another lawsuit against Weinstock for libel in the

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[1] In September 2007, Israel Weinstock passed away while *Weinstock v. Walker* was pending in the Second Circuit. Subsequent to Israel Weinstock's death the Second Circuit substituted petitioner Audrey Weinstock, the wife of her deceased husband and executrix of his estate, as the real party in interest.

New York Supreme Court in Kings County. In June 2002, the case was tried before a jury which found in Weinstock's favor.

Two years prior to the June 2002 jury verdict in the libel action, Handler filed in 2000 a bankruptcy petition in the United States Bankruptcy Court for the Eastern District of New York.

In 2004, now armed with post-1997 newly discovered evidence acquired in the libel case, Weinstock filed an adversary complaint against debtor Handler and Walker "tantamount to a bill in equity to void for fraud" the 1997 final judgment arising under federal common law.[2]

During the intervening years that the libel case was awaiting trial, Weinstock had undertaken a great deal of discovery. As a result of the comprehensive discovery taken in the case as well as the evidence that came out at trial, Weinstock was able to obtain newly discovered evidence of extrinsic fraud that was unavailable to him in 1997 that was committed by Handler, Walker and others in the form of perjury, suborned perjury, income tax evasion, money laundering, fraudulent conveyances, fraudulent concealment of assets, judicial collusion, *ex parte* judicial contacts, and a one-time political contribution made to the

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[2] *Barrow v. Hunton*, 99 U.S. 80, 82-83 (1879) (United States courts have jurisdiction to entertain an action "tantamount to a bill in equity to void a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding.").

presiding assignment judge by Walker and Handler's attorney while *Walker v. Weinstock* was pending; allegations combined if found true by a fact finder at an evidentiary hearing would render the 1997 final judgment void.

In considering a motion to dismiss by Walker and Handler, the bankruptcy court was faced with a claim that it should set aside a state court judgment holding that Weinstock had no interest in real property claimed by the debtor as property of the estate. Although property of the estate, the determination of which is a matter for core bankruptcy jurisdiction, was in question, the adversary proceeding did not seek to determine title under the Bankruptcy Code to the property, but rather Weinstock argued to the bankruptcy court that the state court judgment had been procured by fraud and should be set aside as void under the Due Process Clause of the Fourteenth Amendment. The bankruptcy court relying on *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005) held that the *Rooker-Feldman* doctrine required dismissal, even though there were allegations that the proceedings were tainted by fraud and that the adversary complaint was clearly brought as an equitable "independent action" that *Exxon Mobil* expressly held did not implicate *Rooker-Feldman*.

> Weinstock seeks to have the judgment of the state court in *Walker v. Weinstock* set aside. This is the paradigm of the type of case which must be dismissed under *Rooker-Feldman*, which, as the Supreme Court

> recently explained [citing *Exxon Mobil* and ignoring the Court's "independent action" exception analysis], applies to cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the District Court proceedings commenced and inviting District Court review and rejection of those judgments.

Weinstock v. Handler, supra at 199.

Despite the post-judgment 1997 allegations of newly discovered evidence developed in the libel case by 2002, and the intervening *"independent action"* exception to *Rooker-Feldman* in *Exxon Mobil*, 544 U.S. at 293, the bankruptcy court nonetheless dismissed the adversary proceeding holding that *Exxon Mobil* actually required dismissal because the *Rooker-Feldman* doctrine[3] barred collateral attack on the 1997 New York Supreme Court final judgment. *Weinstock v. Handler*, 324 B.R. 184, 199 (Bankr. E.D.N.Y. 2005).

Weinstock then sought review in the district court which affirmed dismissal of the bill in equity,

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[3] The so-called "*Rooker-Feldman*" exception doctrine to federal subject matter jurisdiction is derived from two cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476-77 (1983). The "*Rooker-Feldman*" doctrine stands for the rather unremarkable proposition that the United States courts lack jurisdiction to engage in appellate review of state court determinations, such power residing exclusively with this Court by certiorari under 28 U.S.C. § 1257.

citing *Exxon Mobil*, the district court held that *Rooker-Feldman* barred collateral attack of the 1997 New York Supreme Court final judgment entered in *Walker v. Weinstock*.

Weinstock then appealed to the Second Circuit which affirmed by summary order[4] on *Rooker-Feldman* grounds for "substantially the same reasons stated by the district court in its memorandum and order", despite the "independent action" exception to *Rooker-Feldman* articulated in *Exxon Mobil*.

This timely petition for writ of certiorari follows.

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[4] While summary disposition is often the norm in *Rooker-Feldman* dismissals, it is particularly troubling here because the panel chose to issue a summary order without a statement of reasons, affirming the district court's dismissal of the adversary complaint when the important legal question presented herein was squarely before the panel on a matter of first impression in the Second Circuit in which ten other court of appeals are deeply divided on the issue.

VII. REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

A. The Petition For Writ Of Certiorari Should Be Granted To Resolve A 6-5 Conflict Among The United States Courts Of Appeals On The Same Important Question Of Law Regarding Whether The So-Called *Rooker-Feldman* Exception Doctrine Deprives The United States Courts Of Subject Matter Jurisdiction Arising Under U.S. Const. Article III, Section 2 To Entertain An Original, Separate And Independent Bill In Equity Collaterally Attacking A Final State Court Judgment As Void Under The Due Process Clause Of The Fourteenth Amendment Of The United States Constitution As Well As For Extrinsic Fraud Upon The Rendering State Court.

The Fourth, Fifth, Sixth, Seventh, Ninth and Tenth Circuits have all held that the *Rooker-Feldman* doctrine does not bar an original, separate and independent action "tantamount to a bill in equity" rising under federal common law collaterally attacking a final state court judgment as void if the state court that rendered it either lacked subject matter jurisdiction, personal jurisdiction or acted in a manner inconsistent with due process or for fraud upon the rendering state court. *Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005) (*Rooker-Feldman* doctrine does not apply because the federal plaintiff's claim of injury rests not on the state court judgment itself, but on an independent claim rather than on the alleged violation of his constitutional rights by the

federal defendants); *Lewis v. East Feliciana Parish Board*, 820 F.2d 143, 146 (5th Cir. 1987) (same); *Catz v. Chalker*, 142 F.3d 279, 294 (6th Cir. 1998) (same); *4901 Corp. v. Town of Cicero*, 220 F.3d 522, 528 (7th Cir. 2000) (*Rooker-Feldman* does not apply where the state court judgment is *void ab initio*); *McKay v. Pfeil*, 827 F.2d 540, 543 (9th Cir. 1987) (same); *Johnson v. Rodriques*, 226 F.3d 1103, 1107 (10th Cir. 2004) (federal courts may entertain a collateral attack on a state court judgment that is void whenever the Court that rendered it lacked jurisdiction over the subject, the person or acted in a manner inconsistent with due process of law and *Rooker-Feldman* is no bar).[5]

The Second Circuit's decision affirming dismissal under *Rooker-Feldman* along with the First, Third, Eighth and Federal Circuits, are in direct conflict[6]

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[5] The Eleventh Circuit has not decided the question presented herein, but has acknowledged an exception to *Rooker-Feldman* as applied by other circuits to bring an independent action collaterally attacking a state court judgment in federal court as void. *Casle v. Tillman*, 558 F.3d 1258, 1265 fn.3 (11th Cir. 2009) ["Other circuits have recognized an exception to the doctrine where the state court judgment is '*void ab initio*' due to the state court's lack of jurisdiction. See, e.g., *4901 Corp. v. Town of Cicero*, 220 F.3d 522, 528 (7th Cir. 2000)."].

In addition to the Eleventh Circuit, the District of Columbia Circuit has not decided the question presented herein.

[6] Supreme Court Rule 10 provides in relevant part:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully

(Continued on following page)

with applicable decisions of the Fourth, Fifth, Sixth, Seventh, Ninth and Tenth Circuits on the jurisdictional question presented herein. The First Circuit invokes *Rooker-Feldman* as bar "if the *relief* sought would, if granted, *effectively void* the state court's judgment." *Hill v. Town of Conway*, 193 F.3d 33, 40 (1st Cir. 1999). The Third Circuit invokes *Rooker-Feldman* as a bar "if the *relief* sought would, if granted, *effectively void* the state court's judgment." *Talifiaferro v. Darby Twp. Zoning Board*, 458 F.3d 181, 192 (3d Cir. 2006).[7] The Eighth Circuit invokes *Rooker-Feldman* as a bar "if the *relief* sought would

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measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; . . .

[7] The Third Circuit's 2006 decision in *Talifiaferro* is particularly problematic in that the panel holds, actually citing *Exxon Mobil* (a case that ironically came to the Supreme Court in 2004 from the Third Circuit) that *Rooker-Feldman* is a bar to federal jurisdiction "if the *relief* requested would *effectively* reverse the state court decision or *void* its ruling" even though *Exxon Mobil* expressly and unequivocally holds that if "a federal plaintiff presents some *independent claim*" *Rooker-Feldman* dismissal does not apply. *Exxon Mobil, supra* at 293. (Emphasis added.)

effectively reverse the state court decision or *void* its ruling." *Bechtold v. City of Rosemount*, 104 F.3d 1062, 1065 (8th Cir. 1997). The Federal Circuit also invokes *Rooker-Feldman* as a bar "if the *relief* requested would *effectively* reverse the state court decision or *void* its ruling." *Johnson v. Way Cool Manufacturing*, 20 Fed. Appx. 895 (Fed. Cir. 2001). (Emphasis added.)

B. The Applicable Decisions Of The First, Second, Third, Eighth and Federal Circuits Also Conflict With The Court's Decision In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005).

In 2005, the Court decided *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). *Exxon Mobil* holds that the *Rooker-Feldman* doctrine should be narrowly applied, and of particular application here, the decision makes it clear that the doctrine does not deprive a district court from exercising subject-matter jurisdiction "simply because a party attempts to litigate in federal court a matter previously litigated in state court. *If a federal plaintiff presents some independent claim*, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Id.* at 293. (Emphasis added.)

VIII. CONCLUSION

The petition for writ of certiorari should be granted to resolve a considerable conflict among the courts of appeals over the scope of the *Rooker-Feldman* doctrine as applied to an independent action tantamount to a common law bill in equity under *Barrow v. Hunton*, 99 U.S. 80 (1879) collaterally attacking a final state court judgment as void.

Respectfully submitted,

ROBERT S. CATZ
Counsel of Record
1600 28th Street, N.W.
Washington, D.C. 20007
(202) 277-6585

Counsel for Petitioner

October 15, 2009

06-2916-cv
Weinstock v. Handler

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

(Filed Aug. 27, 2009)

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OR FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE

DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, in the City of New York, on the 27th day of August, two thousand nine.

Present:

JON O. NEWMAN,
ROBERT A. KATZMANN,
Circuit Judges,
DAVID G. TRAGER,*
District Judge.

AUDREY WEINSTOCK, Executrix for the Estate of Israel Weinstock,

Plaintiff-Appellant,

ISRAEL WEINSTOCK,

Plaintiff,

v.

No. 06-2916-cv

JACK WALKER, KAMINETZER YESHIVA OF JERUSALEM, DAVID J. DOYAGA, as Trustee of the Estate of In Re Handler,

Defendants-Appellees,

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* The Honorable David G. Trager of the United States District Court for the Eastern District of New York sitting by designation.

EMMERICH HANDLER,

Defendant.

For Plaintiff-Appellant:	ROBERT S. CATZ, Washington, DC
For Defendant-Appellee Jack Walker:	WAYNE GREENWALD, Wayne Greenwald P.C., New York, NY

Appeal from the United States District Court for the Eastern District of New York (Amon, *J.*).

ON CONSIDERATION WHEREOF, it is hereby **ORDERED, ADJUDGED**, and **DECREED** that the judgment of the District Court be and hereby is **AFFIRMED.**

Plaintiff-appellant Audrey Weinstock appeals from an order of the district court (Amon, *Judge*) dated May 30, 2006, adopting the bankruptcy court's (Craig, *Bankruptcy Judge*) proposed findings of fact and conclusions of law, and dismissing this action. We assume the parties' familiarity with facts, procedural history, and specification of issues on appeal.

After having reviewed Weinstock's contentions on appeal and the record of proceedings below, we affirm for substantially the same reasons stated by the district court in its memorandum and order of May 30, 2006. We have considered all of Weinstock's arguments and find them to be without merit.

Accordingly, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk

By: /s/ Richard Alcantara
Richard Alcantara,
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re: EMMERICH HANDLER, a/k/a ISAAC HANDLER and RITA HANDLER a/k/a RIFKA HANDLER

Debtors,

NOT FOR PUBLICATION

MEMORANDUM AND ORDER

(Filed May 31, 2006)

00-14960 (CEC)

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ISRAEL WEINSTOCK,

Plaintiff,

-against-

EMMERICH HANDLER, JACK WALKER, KAMINETZER YESHIVA OF JERUSALEM, and DAVID J. DOYAGA, as Trustee of the Estate of Emmerich and Rita Handler,

Defendants,

05-MC-139 (CBA)

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AMON, United States District Judge:

This matter comes before the Court pursuant to Rule 9033(a) of the Federal Rules of Bankruptcy Procedure, which provides that a Bankruptcy Court shall, on a dispositive motion in a non-core proceeding, file proposed findings of fact and conclusions of law with the District Court. For the forgoing reasons, the Court adopts the Bankruptcy Court's proposed

findings of facts and conclusions of law as its own and dismisses the action.

I. Procedure

Plaintiff Israel Weinstock has brought this adversary proceeding against the defendants seeking an order setting aside the decision of the New York Supreme Court, Kings County in *Walker v. Weinstock,* 173 Misc. 2d 1, 658 N.Y.S.2d 167 (Sup. Cir. Kings Cty. 1997), which declared certain transfers made to Weinstock void. Plaintiff also seeks damages for alleged violations of his due process rights under 42 U.S.C. § 1983. Defendant Walker filed a motion to dismiss the proceeding on several grounds including the Bankruptcy Court's lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. The Bankruptcy Judge issued a decision on February 14, 2005, dismissing this proceeding on that ground and so did not reach the other grounds. On May 17, 2005, the Bankruptcy Judge reconsidered the decision on plaintiff's motion pursuant to Rule 9023 of the Federal Rules of Bankruptcy Procedure. Upon reconsideration, the Bankruptcy Judge vacated its February 14, 2005 decision, but agreed with, expanded on and incorporated its reasoning there into a proposed findings of facts and conclusions of law pursuant to Rule 9033 of the Federal Rules of Bankruptcy Procedure.

Plaintiff Weinstock filed objections with this Court which briefly summarized and attached his

brief in opposition to the motion to dismiss filed with the Bankruptcy Judge. Defendant Walker filed an opposition thereto, arguing simply that the Bankruptcy Judge's decision was correct and that plaintiff offered no new reasoning why that decision was incorrect. Walker also moved this Court for sanctions against plaintiff and an order directing that there be no further proceedings in connection with this matter and that an appeal herein would not be taken in good faith. Weinstock opposed that motion and moved to disqualify Walker's counsel.

II. Facts

As the factual history of this and related matters is amply presented in the Bankruptcy Judges' decision, this Court will briefly summarize the history as it pertains to this motion. Defendant Handler was a part owner of a group that purchased two building in Brooklyn, New York in the name of a close-held corporation in which defendant Walker was one of the primary investors. Through two transactions Walker purported to assign all of his shares to his attorney, Weinstock. Handler, Walker, and other investors later challenged this transfer in a suit in state court, alleging that it was the product of Weinstock's threats and coercion, and that the stock purportedly transferred properly belonged to Handler and other investors. The New York State Supreme Court declared both transfers void and held that Weinstock had no claim to either of the buildings. *Walker v. Weinstock,* 173 Misc. 2d 1, 658 N.Y.S2d 167 (Sup. Ct. Kings Cty.

1997). The decision was affirmed on appeal and certiorari was denied. Walker subsequently filed grievances against Weinstock and he was disbarred. His disbarment was upheld on appeal and certiorari was denied.

In 2000, the investor defendants filed for bankruptcy. In 2004, Weinstock brought this adversarial proceeding against the defendants alleging that the decision in *Walker v. Weinstock* was the result of collusion among the present defendants, defendant Handler's law firm and several justices of the New York Supreme Court and Appellate Division. He also alleges that his disbarment was arranged by the defendants and their counsel.

III. Discussion

Under Rule 9023 of the Federal Rules of Bankruptcy Procedure, this Court reviews the Bankruptcy Court's proposed findings of fact and conclusions of law *de novo*. The Bankruptcy Court, having recommended that Weinstock's claims be dismissed according to the *Rooker-Feldman* doctrine, conducted an extensive survey of the origins and development of that doctrine. In the year since the Bankruptcy Court's initial decision, the United States Supreme Court has addressed the doctrine in two opinions. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005); *Lance v. Dennis*, 126 S.Ct. 1198 (2006). As the Court concurs with the Bankruptcy Court's analysis according to the law at the time of

these decisions, this discussion is restricted to whether these recent decisions and their progeny call into question that analysis.[1]

In *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), the Supreme Court held that *Rooker-Feldman* "is confined to cases of the kind from which the doctrine acquired its name," *id.* at 284, and applies in "limited circumstances in which this Court's appellate jurisdiction over state-court judgments precludes a United States district court from exercising subject-matter jurisdiction in an action it would otherwise be empowered to adjudicate under congressional grant of authority." *Id.* at 291. Thus endeavoring to narrow the application of the doctrine, the Court set out four requirements that must be met for a claim to be barred under *Rooker-Feldman*. The plaintiff must have 1) lost in state court, 2) alleged injuries caused by that state court judgment, and 3) invited district court review and rejection of that state court judgment where, 4) that state court judgment was rendered before the district court proceedings were commenced. *Id.* at 284. Weinstock does not contest that he lost in state court or that this action was commenced after the state-court judgment was rendered. Accordingly, the issues presented are whether he has invited this Court to

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[1] The Court notes that the Bankruptcy Court did briefly mention the *Exxon Mobile* decision in its May 17, 2005 decision as being consistent with its analysis in its February 14, 2005 decision.

review and reject the state court judgment and whether his alleged injuries were caused by that judgment.

Although *Exxon Mobile* was ultimately decided on the last requirement, its analysis of the two middle requirements was elaborated upon by the Second Circuit in *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77 (2d Cir. 2005). In *Hoblock,* the plaintiffs sought to challenge in federal court under § 1983 a state court decision invalidating certain ballots it held were cast in violation of state law. The Second Circuit ultimately remanded the voters' claims to the district court to determine whether there was privity such that they were indeed the parties that lost in state court (an analysis under the first requirement), however it first found that their claims did satisfy the second and third (the "substantive *Rooker-Feldman* requirements" according to the *Hoblock* court's designation) which are at issue here. Because the voters in *Hoblock* had alleged injuries caused by the state court's decision invalidating those ballots and sought the reversal of that decision, i.e., a validation of those ballots, the court found the substantive *Rooker-Feldman* requirements had been met.

In so deciding, and with reference to *Exxon Mobile,* the Second Circuit construed narrowly language from the Supreme Court's decision in *Feldman* that suggested the doctrine extended to bar claims that are "inextricably intertwined" with the challenged state-court judgment. *Hoblock,* 422 F.3d at

87-88, The Court held that to call a claim "inextricably intertwined" with the state judgment was merely to conclude that the claim was asserting an injury caused by that state judgment and seeking review and reversal thereof. *Id.* In other words, this language did not create an additional class of peripheral claims also covered by the doctrine. Therefore, while the *Exxon Mobile* court suggested that *Rooker-Feldman* would not bar "some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party," the *Hoblock* court construed "independent" in that phrase to mean simply a claim that did not allege an injury caused by the state court judgment, i.e., that did not satisfy the second requirement. *Id.* at 87 (*citing Exxon Mobile,* 125 S.Ct. at 1527). Accordingly, the doctrine is significantly narrowed after *Exxon Mobile* and *Hoblock.*

Because Weinstock cited the decision in a subsequent filing, the Court briefly notes that the Supreme Court's second decision, *Lance v. Dennis,* 126 S.Ct. 1198, 1203 (2006), held that a suit brought by parties that were in privity with but were not themselves parties to a prior state court action was not therefore barred by *Rooker-Feldman.* In so doing, the Court reaffirmed its holding in *Exxon Mobile* that "courts have at times extended *Rooker-Feldman* far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of

preclusion law pursuant to 28 U.S.C. § 1738." *Id.* at 1201 *(citing Exxon Mobile,* 544 U.S. at 283). In this case, however, there is no question that Weinstock was the actual party who lost in state court, and hence Lance has no relevance here.

In sum, although these decisions restrict the types of claims that may be considered to come within the substantive requirements of the *Rooker-Feldman* doctrine, they do not alter the results here since Weinstock's claims still clearly fall within it. The first thirty-eight pages of Weinstock's forty-one page verified complaint in this adversarial action contain his account of the contested state court proceedings. Indeed, there is little else. The remaining three pages state that Weinstock's equitable claim seeks a declaration that the final judgment in the state court proceedings "is void under the Due Process Clause of the Fourteenth Amendment of the United States Constitution" and his action in law under 42 U.S.C. § 1983 seeks damages for "actual, compensatory and punitive damages against Defendants Handler and Walker for prosecutorial collusion and fraud with bar counsel and others resulting in Plaintiffs disbarment." It could not be clearer that Weinstock "asserts injury based on a state judgment and seeks review and reversal of that judgment" in violation of the *Rooker-Feldman* doctrine, even as recently narrowed. *Hoblock,* 422 F.3d at 87-88. It is explicit on the face of the pleadings. Finally, the case law on which Weinstock relies is inapposite for the reasons stated by the Bankruptcy Judge.

IV. Sanctions

Defendant Emmerich Handler has moved this Court for an order granting sanctions against Weinstock under Rule 11 of the federal Rules of Civil Procedure for filing objections to the proposed findings of fact and conclusions of law. Although Weinstock's claim is clearly without merit, the recent narrowing of the *Rooker-Feldman* doctrine after the decision of the Bankruptcy Court makes the award of sanctions inappropriate. The motion is denied.

V. Disqualification

Weinstock's motion for disqualification alleges that counsel for defendant Walker must be disqualified in this action because he represents defendant Handler in other actions and by nature of those representations had access to privileged information. Because the Court dismisses the action as a matter of law, this motion is rendered moot at least as to any representation in connection with this adversarial action. The motion is denied.

VI. Conclusion

After *de novo* review of the proposed findings of facts and conclusions of law and in consideration of the developments in case law since the issuance of the Bankruptcy Judge's opinion, the Court concurs with those findings and conclusions, and hereby adopts them as the decision of this Court. Accordingly,

Weinstock's action is DISMISSED, and all pending motions are DENIED.

SO ORDERED.

Dated: Brooklyn, New York
May 30, 2006

Carol Bagley Amon
United States District Judge

UNITED STATES
BANKRUPTCY COURT
EASTERN DISTRICT OF
NEW YORK

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In re:	Chapter 7
EMMERICH HANDLER, a/k/a ISAAC HANDLER and RITA HANDLER a/k/a RIFKA HANDLER	Case No. 00-14960-CEC
Debtors.	

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ISRAEL WEINSTOCK,	
Plaintiff,	
-against-	
EMMERICH HANDLER, JACK WALKER, KAMINETZER YESHIVA OF JERUSALEM, and DAVID J. DOYAGA, as Trustee of the Estate of Emmerich and Rita Handler,	Adv. Pro. No. 04-01174-CEC
Defendants.	

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DECISION ON MOTION FOR RECONSIDERATION

APPEARANCES:

Israel Weinstock 140-06 Rockaway Beach Blvd Belle Harbor, New York 11694 Plaintiff	Wayne M. Greenwald, Esq. 99 Park Avenue Suite 800 New York, New York 10016 Attorney for Jack Walker

Gary F. Herbst, Esq.
LaMonica Herbst
and Maniscalco
3305 Jerusalem Avenue
Wantagh, New York 11793
Attorneys for the Chapter
7 Trustee

Emmerich Handler, Esq.
Rita Handler
1537 50th Street
Brooklyn, New York 11219
Debtors

CARLA E. CRAIG, United States Bankruptcy Judge

This matter comes before the Court on the motion of plaintiff, Israel Weinstock, seeking reconsideration pursuant to Rule 9023 of the Federal Rules of Bankruptcy Procedure ("Rules") of the judgment dismissing this adversary proceeding entered on March 18, 2005. The judgment is based upon a Decision entered on February 14, 2005. For the reasons set forth below, reconsideration is granted and the judgment is vacated to the extent set forth herein.

Standard Under Rule 9023

Rule 9023 incorporates by reference Fed. R. Civ. P. 59(e), which provides that a motion to alter or amend a judgment may be filed no later than 10 days after entry of judgment. *Wight v. BankAmerica Corp.*, 219 F.3d 79, 84 (2d Cir. 2000). In order to be successful, a motion to alter or amend a judgment must show that the court "overlooked 'matters or controlling decisions' which, had they been considered, might reasonably have altered the result reached by the court." *Cioce v. County of Westchester,* 2005 U.S. App. LEXIS 6587 (2d Cir. 2005), *quoting Key Mechanical*

Inc. v. BDC 56 LLC (In re BDC 56 LLC), 330 F.3d 111, 123 (2d Cir. 2003); *Adams v. United States,* 686 F. Supp. 417, 418 (S.D.N.Y. 1988), *citing Bozsi Limited Partnership v. Lynott,* 676 F. Supp. 505, 509 (S.D.N.Y. 1987); *Caleb & Co. v. E. I. Du Pont de Nemours & Co.,* 624 F. Supp. 747 (S.D.N.Y. 1985); *New York Guardian Mortgagee Corp. v. Cleland,* 473 F. Supp. 409, 421 (S.D.N.Y. 1979); *United States v. Int'l Business Machines Corp.,* 79 F.R.D. 412, 414 (S.D.N.Y. 1978); *see also Park South Tenants Corp. v. 200 Central Park South Associates, L.P.,* 754 F. Supp. 352, 354 (S.D.N.Y. 1991), *aff'd,* 941 F.2d 112 (2d Cir. 1991). Such a motion may not be used to relitigate matters previously determined or to raise a new legal theory or to present evidence that could have been presented prior to the entry of judgment. *Ryan v. Sullivan, Hill, Lewin, Rez, Engel & Labazzo,* 2005 U.S. Dist. LEXIS 2122 (D. Conn., 2005), *quoting Schonberger v. Serchuk,* 742 F. Supp. 108, 119 (S.D.N.Y. 1990) (motions made pursuant to Rule 59(e) must adhere to stringent standards to prevent "wasteful repetition of arguments already briefed, considered and decided"); *In re Williams,* 188 B.R. 721, 725 (Bankr. D. R.I. 1995) (Rule 59(e) may not be used to rehash arguments already rejected by court or for refuting court's prior decision); *Diebitz v. Arreola,* 834 F. Supp. 298, 302 (D. Wis. 1993) (motion to alter or amend not designed to relitigate old matters); *In re Dike,* 2004 WL 1171721, 102 (Bankr. D.N.H. 2004), *citing* 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil § 2810.1 (2d ed. 1995).

Weinstock alleges in this adversary proceeding that the determinations of the state court in *Walker v. Weinstock,* 173 Misc. 2d 1; 658 N.Y.S.2d 167 (Sup. Ct. Kings Co. 1997), *aff'd* 255 A.D.2d 508, 680 NYS2d 177 (2d Dep't 1998) were a result of collusion among several judges, the Debtor, Walker, Kaminetzer Yeshiva of Jerusalem, and the law firm of Cleary, Gottlieb, Steen & Hamilton ("Cleary"). In *Walker v. Weinstock,* the state court rejected Weinstock's claim to be owner of 4200 Avenue K Realty Corp., and found that the purported transfer by Walker (Weinstock's former client) to Weinstock of the stock of that corporation must be set aside as unconscionable, and as the consequence of overreaching and undue influence by Weinstock over his client, Walker. 658 N.Y.S.2d at 171. In affirming that judgment, the Appellate Division held that

> [t]he trial evidence amply supports the Supreme Court's determination, *inter alia,* that the appellants Israel Weinstock and JB Trading International, Ltd., had no interest in 4200 Avenue K Realty Corporation or the property owned by that corporation. The terms of, and the circumstances surrounding, the assignments through which the appellants claim ownership rendered those assignments void as the products of coercion and overreaching.

Walker v. Weinstock, 255 A.D.2d 508; 680 N.Y.S.2d 177.

At the same time as it affirmed the trial court on the merits, the Appellate Division affirmed the Supreme Court's denial of Weinstock's motion to vacate the judgment, holding:

> Upon their motion to vacate the judgment, the appellants failed to present either new evidence which, if introduced at trial, would have produced a different result (*see* CPLR 5015[a][2], or any evidence of fraud on the part of the plaintiffs (*see* CPLR 5015[a][3]). Therefore, the motion was properly denied.

Id.

Weinstock alleges that the Debtors and Cleary, in collusion with various state court judges, worked to strip him of his interest in 4200 Avenue K Realty Corp., which Weinstock claimed to have acquired from Walker, and that they arranged to have him disbarred to prevent him from recovering that interest, and to cover their tracks. In Weinstock's disbarment proceedings, the Appellate Division, Second Department found, among other things, that based upon the facts found by the trial court in *Walker v. Weinstock,* Weinstock engaged in conduct involving overreaching and coercion that adversely reflected upon his fitness to practice law. *In re Weinstock,* 292 A.D.2d 1, 2-3; 740 N.Y.S.2d 128 (2d Dep't 2002). Weinstock seeks in this adversary proceeding to have the state court judgment in *Walker v. Weinstock,* set aside as void under the due process clause of the Fourteenth Amendment, and seeks disgorgement from defendants Walker and Handler of their "enhanced misbegotten gains

traceable to the void judgment." (Verified First Amended Complaint For Equitable Relief, p. 39.)

In the Decision entered February 14, 2005, *Weinstock v. Handler (In re Handler),* 321 B.R. 632 (Bankr. E.D.N.Y. 2005), this Court concluded that the *Rooker-Feldman* doctrine requires dismissal of this adversary proceeding, because the claims asserted here can succeed only if determinations of the Supreme Court, Kings County and Appellate Division, Second Department in *Walker v. Weinstock* are incorrect. The reasoning behind that conclusion is discussed at length in the Decision, and will not be repeated here.

Weinstock contends on this motion that *Griffith v. Bank of New York,* 147 F.2d 899 (2d Cir. 1945), constitutes controlling law, which, if properly considered, would have compelled a different outcome.

This Court disagrees. First of all, *Griffith* does not address the applicability of the *Rooker-Feldman* doctrine at all. Indeed, *Griffith* predates by 38 years the Supreme Court's decision in *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983), and must be understood in light of the volume of case law developing the *Rooker-Feldman* doctrine since that date.

Griffith is based upon an analysis of principles of *res judicata* and the facts of that case differ significantly from those presented here. *Griffith* was a diversity action by an heir against a bank which had served as testamentary trustee, seeking an accounting and damages. The bank raised the defense of *res*

judicata, relying on two state court orders: (1) a consent judgment of Supreme Court, New York County settling the bank's account as trustee, and (2) a Surrogate's Court order dismissing a petition seeking resettlement of this account by reason of claimed duress by the defendant in the procurement of the consent judgment. *Res judicata* did not prevent collateral attack on the consent judgment on grounds of alleged duress, the Second Circuit held, because " . . . the very duress by which the release or consent is obtained also prevents the coerced party from challenging before or at trial the statements or conduct of its adversary. Thus in the original action the issue of duress never is before the court." *Id.* at 902. The Second Circuit also found that the Surrogate's Court's order dismissing the heir's petition for resettlement of the account did not constitute *res judicata* preventing collateral attack on the consent judgment because the Surrogate's "opinion does show clearly that decision is not on the merits, but is only because relief was sought in the wrong court." *Id.* at 903.

Here, the decision that Weinstock seeks to attack in federal court – the final judgment of Supreme Court, Kings County in *Walker v. Weinstock* – was plainly on the merits, and was affirmed on the merits by the Appellate Division, Second Department. Moreover, the trial court's denial of Weinstock's motion to vacate the judgment pursuant to CPLR 5015(a)(2) (which provides for relief from a judgment on the grounds of newly-discovered evidence which, if introduced at trial, would probably have produced a

different result), and CPLR 5015(a)(3) (which provides for relief from a judgment on the grounds of fraud, misrepresentation or other misconduct of an adverse party) was also affirmed; in that decision, the Appellate Division found that there was no "evidence of fraud on the part of the plaintiffs." *Walker v. Weinstock,* 255 A.D. at 508.

Moreover, although the application of *Rooker-Feldman* and *res judicata* often produce similar outcomes, there is a distinction between the doctrines that is fatal to Weinstock's efforts to invoke *Griffith* as authority for maintaining this action. This distinction is illustrated in *Smith v. Weinberg,* 994 F. Supp. 418 (E.D.N.Y. 1998). There, the plaintiff asserted a claim for conversion, alleging that the defendants wrongfully obtained a default judgment of foreclosure in state court by means of deceit and fraud. The Court rejected the defendant's argument that the plaintiffs' claims were barred by the doctrine of *res judicata* based on the foreclosure judgment, noting that under New York law, the doctrine of *res judicata* does not bar a collateral attack on a judgment that was procured by fraud. *Id.* at 421. However, on a subsequent motion for summary judgment, the Court dismissed plaintiffs' claims based on the *Rooker-Feldman* doctrine, holding that "[t]he fact that the plaintiff alleges that the state court judgment was procured by fraud does not remove his claims from the ambit of *Rooker-Feldman*." *Id.* at 424. "As the Supreme Court noted in Rooker, even if the judgment was wrongly procured, it is, nevertheless, an effective

and conclusive adjudication until modified or reversed in the appropriate State appellate or collateral proceeding." *Id.*

Other courts have also found that *Rooker-Feldman* applies even when there are allegations that the state court proceedings were tainted by fraud. In *Levitin v. Hamburger,* 932 F. Supp. 508, 513 (S.D.N.Y. 1996), *aff'd,* 107 F.3d 3 (2d Cir. 1997), for example, the plaintiff claimed that defendants colluded to conduct a sale of his partnership interest without his knowledge and committed other violations of due process, including bribing the referee. The court found that these claims, which amounted to a request that the District Court review the judgment rendered in the state proceeding and readjudicate his claims, were barred by *Rooker-Feldman*. *Accord, Zipper v. Todd,* 197 U.S. Dist. LEXIS 4770, 1997 WL 181044 * at 1-3 (S.D.N.Y. 1997) (finding that *Rooker-Feldman* prohibited a federal challenge to a state court order of liquidation, holding that "plaintiffs' allegations of fraud . . . are unavailing").

The same result must be reached here. Weinstock seeks to have the judgment of the state court in *Walker v. Weinstock* set aside. This is the paradigm of the type of case which must be dismissed under *Rooker-Feldman,* which, as the Supreme Court recently explained, applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the District Court proceedings commenced and inviting District Court review and rejection of those judgments." *Exxon*

Mobil Corp. v. Saudi Basic Industries Corp., 125 S. Ct. 1517, 1521-1522; 161 L.Ed.2d 454 (2005).

This is not the first time Weinstock has brought suit in federal court based upon the allegations made in this adversary proceeding. In *Weinstock v. Huttner et al.*, CV-03-741, Weinstock sued the judges of the Supreme Court, Kings County and Appellate Division, Second Department who had decided against him in *Walker v. Weinstock* (and who had also been members of the judicial panel in his disbarment proceedings), as well as two Grievance Committee staff members, seeking (among other things) declaratory judgments that these state court proceedings had violated his Constitutional rights. This action was dismissed *sua sponte* by the District Court. Among the grounds for dismissal was the District Court's conclusion that the *Rooker-Feldman* doctrine deprived the court of subject matter jurisdiction to hear the claims, which were inextricably intertwined with the state court disbarment proceedings. (Memorandum Order dated April 7, 2003 (Trager, J.).)

Leber-Krebs, Inc. v. Capitol Records, 779 F.2d 895 (2d Cir. 1985), also cited by Weinstock as controlling authority overlooked by this Court, has even less applicability to this case. *Leber-Krebs* does not implicate the *Rooker-Feldman* doctrine, as it does not involve an attempt to challenge a prior state court determination in federal court. Rather, *Leber-Krebs* deals with a federal court challenge to a judgment previously obtained in federal court, and is based upon,

among other things, the application of Fed. R. Civ. P. 60(b).

Weinstock also contends that because this is a non-core proceeding, this Court should not have dismissed the complaint, but rather should have issued a report and recommendation to the District Court pursuant to Bankruptcy Rule 9033. Although it may be noted that this method of proceeding had no substantive impact on Weinstock's rights, given that a judgment dismissing the complaint, like proposed findings and conclusions under Rule 9033, is subject to *de novo* review, it is appropriate to vacate the judgment, and to incorporate this Court's prior decision and this decision in a report and recommendation to the District Court, which is being issued herewith.

Dated: Brooklyn, New York
May 17, 2005

/s/ Carla E. Craig
CARLA E. CRAIG
United States Bankruptcy Judge